



DEPARTMENT OF HUMAN RESOURCES

EMPLOYMENT SECURITY ADMINISTRATION

1100 NORTH EUTAW STREET
BALTIMORE, MARYLAND 21201

383-5032

- DECISION -

BOARD OF APPEALS

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Appeals Counsel

STATE OF MARYLAND

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Governor

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Secretary

DECISION NO.: 1194 -BH-80

DATE: October 21, 1980

APPEAL NO: BOJ#1

S.S. No.:

CLAIMANT: Robert J. DiGrazia

EMPLOYER: Montgomery County Dept. of Police

L. O NO.: 43

APPELLANT: Board assumed
jurisdiction

ISSUE: Whether the Claimant is entitled to unemployment benefits within the meaning of Article 95A, Section 20(g) (7)(v)E of the Maryland Unemployment Insurance Law.

NOTICE OF RIGHT OF APPEAL TO COURT

YOU MAY FILE AN APPEAL FROM THIS DECISION IN ACCORDANCE WITH THE LAWS OF MARYLAND. THE APPEAL MAY BE TAKEN IN PERSON OR THROUGH AN ATTORNEY IN THE SUPERIOR COURT OF BALTIMORE CITY, OR THE CIRCUIT COURT OF THE COUNTY IN MARYLAND IN WHICH YOU RESIDE.

THE PERIOD FOR FILING AN APPEAL EXPIRES AT MIDNIGHT

November 20, 1980

—APPEARANCES —

FOR THE CLAIMANT :

Claimant not present
Peter Davis - Attorney at Law

FOR THE EMPLOYER:

Charles Rand -
Asst. Atty. for
Montgomery County
Donald Brooks -
Chief of Police
Anthony Ventre -
Law Clerk
Chris Costello -
The Gibbens Co.

FINDINGS OF FACT

The Board of Appeals assumed original jurisdiction in this case at the request of the Executive Director because the case involved the interpretation of a complicated section of the Law, namely, 20(g) (7)(V)E of the Maryland Unemployment Insurance Law.

The Claimant's attorney appeared without his client on the scheduled hearing date and requested a further postponement. Since the Board would not grant a further postponement in this case after two prior postponements, he made a written request that the case be withdrawn. He then left the Office of the Board of Appeals although the Board had requested that he wait until his case was called. When the case was called for a hearing, the Board of Appeals, after considering the Claimant attorney's request for a withdrawal, denied that request and continued with the hearing.

The Claimant was appointed Chief of Police for Montgomery County Maryland which is a home rule county. The position of Chief of Police is not a tenured position and is designated and described in Article 1, Chapter 35 of the Montgomery County Code.

The Claimant was appointed to his position by the County Executive and in March of 1979 he was terminated from his job by the County Executive. On July 10, 1979 he "filed a claim for unemployment benefits.

In the course of performing his duties the Claimant worked forty hours per week, supervised the Police Department for Montgomery County and hired and fired Personnel. In his position as Chief of Police he occupied a policy making and advisory position in the County government.

COMMENTS

All evidence having been heard, read and considered, the Board of Appeals finds that the Claimant, as Police Chief, was in 21 major non-tenured policy making and advisory position with the Montgomery County Government and is therefore disqualified from receiving unemployment benefits within the meaning of Section 20(g) (7)(V)E of the Maryland Unemployment Insurance Law.

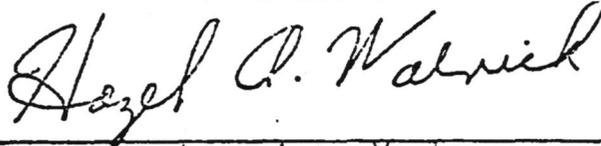
In reaching this decision, the Board of Appeals has examined the Legislative Documents surrounding the Law involved in this case and finds that it was the intent of the Legislature that employees in major non-tenured designated policymaking or advisory positions are excluded from covered employment and are not subject to the unemployment insurance Law.

DECISION

The Claimant was in a position, under the Laws of Montgomery County which was designated as a major non-tenured policy making or advisory position. He is disqualified from receiving benefits from July 10, 1979, the date his benefit year began.



Chairman



Associate Member

K:W
kmb

DATE OF HEARING: September 8, 1980

COPIES MAILED TO:

CLAIMANT

EMPLOYER

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UNEMPLOYMENT INSURANCE - WHEATON